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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/084,831	02/26/2002	Frederick L. Jordan	HO-P02917US5	4094

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EXAMINER
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TOOMER, CEPHIA D

ART UNIT	PAPER NUMBER
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1714

DATE MAILED: 06/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/084,831

Applicant(s)

JORDAN, FREDERICK L.

Examiner

Cephia D. Toomer

Art Unit

1714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 03 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 57-64, 66-74, 76-91 and 93-99 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 93-95 is/are allowed.
- 6) ☒ Claim(s) 57-59, 62-64, 66-74, 76-91 and 96-99 is/are rejected.
- 7) ☒ Claim(s) 60 and 61 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

This Office action is in response to the amendment filed March 3, 2005 in which claims 63, 73, 80 and 90 were amended and claims 39-56 were canceled. The allowability of claims 57-64, 66-74 and 76-91 is withdrawn.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 63, 73, 80, 90, 96, 97 and their dependents are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are rejected because it is not clear how "coal" may be a solvent. Also, the term "coal" appears twice in the claims.

3. Claims 64, 81, 91 and their dependents are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are rejected because the language "selected from the group selected from" is improper Markush language.

4. Claims 66, 76, 84 and their dependents are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are rejected because it is not clear if the base fuel is coal. In claim 84, "feed" should read – fuel --.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 57-59 and 62 are rejected under 35 U.S.C. 102(b) as being anticipated by Finnan (US 4,504,499).

Finnan teaches a heat-stabilized carotenoid-colored edible oil comprising stabilizing amounts of at least one of the following antioxidants (thermal stabilizers): lauryl thiodipropionate, dilauryl thiopropionate, a tocopherol and mixtures thereof (see abstract). The edible oil may be wheat-germ oil (see col. 2, lines 55-65) and the carotenoid may be beta-carotene or lycopene (see col. 1, lines 48-60; Example 1). The carotene is suspended in an edible oil such as peanut oil (diluent or thermal stabilizer)(see col. 3, lines 62-65). Finnan is not directed to a fuel additive; however, intended use is given no patentable weight in claims that are directed to the composition per se.

Accordingly, Finnan teaching all the limitations of the claims anticipates the claims.

7. Claims 57-59, 62 and 64 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujiwara (US 5,705,526).

Fujiwara teaches a composition comprising lycopene, beta-carotene, alpha-carotene, d,l-tocopherol and a mixture of wheat-germ oil and a vegetable oil (see abstract). Fujiwara also teaches that the composition may comprise a solvent and a dispersant (see col. 3, lines 51—56). The carotene of the example is dispersed in palm oil (diluent or thermal stabilizer)(see col. 5, line 2). Fujiwara is not directed to a fuel oil additive. However, intended use is given no patentable weight in claims that are directed to the composition per se.

Accordingly, Fujiwara teaching all the limitations of the claims anticipates the claims.

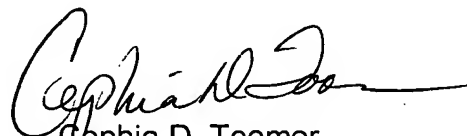
8. Claims 60-61 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art fails to teach or suggest that the plant oil extract is derived from barley and carotenoid, the combination of the barley oil extract and beta-carotene; and that the thermal stabilizer is meadowfoam oil.

9. Claims 93-95 are allowable because the prior art fails to teach the coal additive comprising the combination of the barley oil extract and beta-carotene; and that the thermal stabilizer is meadowfoam oil.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cephia D. Toomer whose telephone number is 571-272-1126. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on 571-272-1119. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Cephia D. Toomer  
Primary Examiner  
Art Unit 1714

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